REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NO. 208 OF 2007**

% **Date of Decision** : **15th May, 2007.**

GOYAL MG GASES PVT LTD .... Appellant.
Through Mr. A.M. Singhvi, Sr. Advocate and
Mr.Sandeep Sethi, Sr. Advocate with Ms.Anuradha Dutt,
Mr. Pawan Sharma and Mr. H.S. Popli, Advocates.

VERSUS

AIR LIQUIDE DEUTCHLAND GAMbH & ORS. .... Respondents.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. M/s. Goyal M.G. Gases Pvt. Ltd has filed the present appeal under Section 10 of Delhi High Court Act against the Order dated 19th

October, 2006 passed by the learned Single Judge dismissing it's application under Sections 11 and 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India praying for initiation of contempt proceedings against the respondents. The appellant had made 20 different parties as respondents to the said application. M/s. Air Liquide Deutchland GMbH was respondent no.1.

2. The appellant had entered into a share, purchase and cooperation Agreement (hereinafter referred to as the Agreement, for short) dated 12th May, 1995 with the respondent no.1. Under the said agreement, the Goyal Group of companies was to hold 51% shares in the appellant company with the respondent no.1 having 49% shareholding. The said Agreement also had a non-competition clause which provided that the respondent no.1 will give written information to the appellant about every business transaction it plans to take in India with regard to industrial gases and related business, with the first right of refusal to the appellant by giving two month's notice in writing. The agreement also provided that the

respondent no.1 will give due consideration to the interest of the appellant-company.

3. M/s. Air Liquide S.A.-respondent no.2 herein is the holding company of the respondent no.1. Similarly, Air Liquide India Holdings Pvt. Ltd-respondent no.3 and Air Liquide International-respondent no.4 are wholly owned subsidiaries of the respondent no.2.

4. The petitioner-appellant herein filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 being OMP No. 361/2004 in this Court claiming that there was breach of the non-competition clause by the respondents 1-3 herein. Vide Order dated 31st January, 2005, the learned Single Judge noticed that there was earlier litigation between Goyal Group and the respondent no.1 which resulted in an Order dated 23rd October, 1998 being passed in FAO(OS) No. 251/1998. It was accordingly directed that the respondent no.1 cannot enter into competition with the appellant. Similar direction was issued that the respondent no.2 shall also not compete with the appellant. However, no injunction order was

passed against the respondent no.3, inter alia, holding that the said company was already in the same business and in competition with the appellant and cannot be deprived and forced to discontinue it's on-going business activities. However, to protect the interest of the appellant it was directed that the Directors nominated by the respondent no.1 had liberty to attend board meetings of the appellant-company but shall not participate in those meetings in which any matter relating to filing of tenders by the appellant company is discussed or approved. This was to ensure secrecy of the tenders being filled up and submitted by the appellant, as the respondent No.3 was/is a competitor of the appellant. Learned Single Judge also clarified that the interim order was to remain in force till the disputes are adjudicated by the Arbitrator. It is, therefore, apparent that no injunction order was passed against the respondent no.3. The Respondent no.3 was therefore at liberty to compete with the appellant and do business in India.

5. In the contempt petition which was filed before the learned Single Judge, the appellant had alleged that the respondent no. 4, a 100%

subsidiary of the respondent no.2 like the respondent no.3, had given guarantee to Steel Authority of India Limited (hereinafter referred to as SAIL, for short) in respect of a contract entered into between the respondent no.3 and SAIL for supply of oxygen and nitrogen at Bhilai, India. The guarantee was in the nature of financial and technical guarantee. It was pleaded that the respondent no. 4 being a subsidiary of the respondent no.2 is merely an agent of the respondent no.2 and both of them, once doctrine of lifting of the corporate veil is applied, are one single entity and therefore there is violation and willful disobedience of the Order dated 31st January, 2005. Respondent nos.5-20 in the present Appeal were also made parties as the respondent no.5 was the Chairman of the respondent no.1 and the respondent nos. 6-16 were Members of the Executive Committee of the respondent no.2 and the respondent nos. 17-20 were Directors of the respondent no.3. It was also alleged that the respondent no.7 was in-charge of and responsible for the affairs of the respondent no.4 and he had signed the letter of guarantee dated 7th October, 2005 on behalf of

the respondent no.4.

6. Learned counsel for the appellant, during the course of his arguments, had submitted that he was not pressing and alleging willful violation or disobedience of the Order dated 31st January, 2005. It is apparent and clear that by the said Order the learned Single Judge had refused to grant any injunction or restrain the respondent no.3 from doing business in India as the said Company was already in competition with the appellant and could not be deprived from it's right to do business and carry on it's activities. Admittedly, the respondent nos.3 and 4 are 100% subsidiaries of the respondent no.2. Inspite of this position, no injunction order was passed against the respondent No.3. It is therefore, obvious that no contempt proceedings could have been initiated against the respondent no. 4 for giving financial and technical guarantee to SAIL, in respect of the contract entered into between the respondent no.3 and SAIL for the simple reason that there was no injunction and restraint order in the Order dated 31st January, 2005 against the respondent no. 3. Violation or contempt of the Order

dated 31st January, 2005 is possible only if an injunction or restraint order had been passed against the respondent no.3. We may mention here that the learned Single Judge has referred to these aspects in the impugned Order. It has been rightly held that the Court dealing with contempt proceedings cannot travel beyond the substantive order of which contempt is alleged and the rightness or wrongness of the substantive order cannot be made the subject matter of contempt proceedings. (Refer, ***Prithawi Nath Ram versus State of Jharkhand*** reported in AIR 2004 SC 4277, ***K.G. Derasari and another versus Union of India and others*** reported in (2001) 10 SCC 496). It is also equally well settled that contempt jurisdiction is to be used sparingly and only in cases of willful disobedience when there is a case beyond reasonable doubt. Contempt power is to be exercised to uphold the dignity of the Court in larger interest of the society and for proper administration of justice delivery system. Learned Single Judge in this regard has referred to the judgments of the Supreme Court in the case of ***Shri Baradakanta Mishra versus the Registrar of Orissa High Court***

and another reported in (1974) 1 SCC 374, ***Anil Ratan Sarkar and others versus Hirak Ghosh and others*** reported in (2002) 4 SCC 21, ***Indian Airports Employees' Union versus Ranjan Chatterjee and another*** reported in (1999) 2 SCC 537, ***Attorney General versus Newspaper Publishing Plc and others*** reported in (1997) III All.E.R. 159 and ***Shri B.K. Kar versus The Hon'ble the Chief Justice and his companion Justices of the Orissa High Court and another*** reported in AIR 1961 SC 1367.

7. In some cases, Courts have pierced the corporate veil in contempt proceedings (See, ***Delhi Development Authority versus Skipper Construction Company Pvt. Ltd.*** reported in 57 (1995) DLT 737 SC). However, the said doctrine should not be applied in the present case as no injunction/restraint order was passed against the respondent no.3 in the Order dated 31st January, 2005. Once the respondent no.3 was permitted and allowed by this Court to submit tenders and continue doing business in India, no contempt proceedings can be initiated because the respondent no. 4 has stood as a guarantor in a tender submitted by the respondent no.3.

The short question before the learned Single Judge was whether there was any willful disobedience of the Order dated 31st January, 2005 by the respondents 3 and 4 and not whether the Order dated 31st January, 2005 requires any modification or change. This Court sitting in Appeal is not required to consider and go into the question whether restrain order should have been passed against the respondent no.3 also and the Order dated 31st January, 2005 refusing to grant any injunction against the respondent no.3 requires modification.

8. It may be relevant to state here that the validity of the Order dated 31st January, 2005 is not the subject matter of the present Appeal. The present Appeal is specifically directed against the Order dated 19th October, 2006 as is clear from the heading to the present appeal. However, in the prayer clause the appellant as an alternative has made a prayer for declaring that the injunction order dated 31st January, 2005 against the respondent no.2 is binding on all it's subsidiaries and that all the respondents should give an undertaking for honouring the injunction order dated 31st January,

2005. After rejection of the present appeal under Sections 11 and 12 of the Contempt of Courts Act, we do not think that any direction for modification of the Order dated 31st January, 2005 and for extending it's scope can be passed. As stated earlier, Order dated 31st January, 2005 is not the subject matter of the present Appeal. The said Order refusing to grant injunction against the respondent no.3 has become final and binding between the parties as it was not questioned in an appeal. By filing an appeal against the Order dated 19th October, 2006 on a contempt application for violation of Order dated 31st January, 2005, the appellant herein cannot expand the scope and jurisdiction of this Court and question and challenge the Order dated 31st January, 2005 itself. Appeal against the Order dated 31st January, 2005 is barred by limitation. The appellant cannot get over the period of limitation by this ingenious method. Moreover, as already stated above, it is well settled that in contempt proceedings Courts cannot go beyond the Order which is made the basis for invoking the contempt jurisdiction. The appellant in this circuitous manner cannot be permitted and allowed

to challenge the Order dated 31st January, 2005, in an appeal arising out of an order passed in contempt proceedings for alleged violation of order dated 31st January, 2005. The Order on which the contempt proceedings were based cannot be challenged in an appeal filed against the order dismissing the contempt application. The only issue which arises for consideration by this appellate court is whether the respondent No.3 and 4 have violated order dated 31st January, 2005. On this Learned Counsel for the appellant has admitted that the said respondents have not disobeyed the order dated 31st January, 2005 as no injunction order was passed against the respondent No.3. Infact, injunction against respondent No.3 was specifically refused.

9. The contention of the learned counsel for the appellant is self-contradictory and mutually destructive. On the one hand, it is alleged that the Order dated 31st January, 2005 has been violated and at the same time in the alternative it is submitted that the Order dated 31st January, 2005 may be set aside to the extent that no injunction/restrain order was passed against the respondent no.3. As an appellate Court, under Section 10 of the Delhi High Court Act, we are concerned with the legality of the impugned Order

dated 19th October, 2006 and not with the Order dated 31st January, 2006.

10. It may also be relevant to state here that the Order dated 19th October, 2006 was also made subject matter of Special Leave Petition No.20166/2006 before the Supreme Court presumably on the ground that the Order dismissing the contempt application under Sections 11 and 12 of the Contempt of Courts Act, 1971 is not appealable in an intra-court appeal as held by the Supreme Court in case of ***Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda***, reported in (2006) 5 SCC 399. Similar contentions as raised in the present Appeal were also raised before the Supreme Court in the SLP which was dismissed on 13th December, 2006. Now the same Order dated 19th October, 2006 is again sought to be challenged before this Court.

11. In view of the above, we do not find any merit in the present Appeal and the same is liable to be dismissed.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

MAY 15, 2007.
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